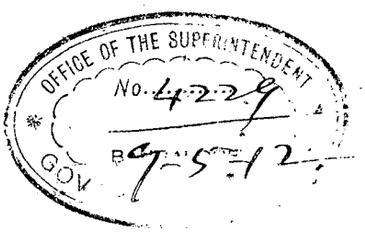
12 copies

G.R.S. 57.]



File No. 32 ~~4 of 10~~

P-48

Serial Nos. 1—6

1909-10

GENERAL AND REVENUE SECRETARIAT

(Legislation)

Part A: Manuscript
for April 1912

Amendment of the Indian Contract Act, IX of 1872 as in force in Mysore—

Serial Nos. 1—6

D.O letter No. 2086 dated the 27th March 1911. from the Dewan, Mr. J. Ananda Rao Avergs. to Col. Hugh Daly CSI CIE. Resident in Mysore

Forwards a Copy of the Bill and states that it is proposed to place it before the Legislative Council in due Course

2.

GPB—5,000—20-3-06.

2. D. O. Letter No. 231 dated the 5th April 1911 from Mr. P. B. Wanbrough, Y. A. Resident in Mysore to Mr. J. Aranda Offg. Y.A.C.S.R. Dewan.

States that there is no prima facie objection to the Bill being laid before the Legislative Council as proposed.

3. Letter Pol. No. 41 dated the 5th December 1911 from the Secretary to Government to the Y.A. Resident in Mysore

Forwards a Copy of the Bill as passed by the Legislative Council and requests him to obtain the sanction of the Govt. of India for it being passed as Law.

4. Letter No. 323 dated the 17th Jany. 1912 from the Y.A. Resident in Mysore to the Dewan.

Conveys the sanction of the Government of India to the Bill, subject to the usual Conditions

5. G.O. No. 280 dated the 28th March 1912 to the Superintendent, Mysore Gazette.

Directs the publication of the Bill as Regulation No. IV of 1912

[Encl. Regn. IV of 1912]

6. Letter No. NR 910 dated the 30th April 1912 from the Secretary to Govt. Land Revenue Depts to the Y.A. Resident in Mysore

Forwards the usual Copies of the Regulation

G.R.S.11] 1910.

GENERAL AND REVENUE SECRETARIAT

(Legislative)

NOTES.

File No. 32 1909

FILE HEADING.

Amendment of the Indian Contract Act IX of 1872 as in force in Upper Burma

From

No.	Dated	Received

Diary No.	Enclos.	Spare Copies	Serial No.

BRIEF ABSTRACT OF LETTER.

NOTES AND ORDERS.

1-3 d 9-44

NOTES—First sheet

GPB—30,000—3-4-07.

Leg 732 of 1910

SUBJECT. N[o].

The Indian Co[ntract] Act (IX of 1872);
Mr. S. R. Balak[rishna] Shimoga Munic[ipal]

Summary of the amendments introduced into the Indian Contract Act (IX of 1872) by Act No. VI of 1899; may be made by Mysore Regulation (Sections 16, 18)

Reply of Government

Copy of the address with any corrections made before the discussion of the subject before the Assembly.

No more "Consideration" Sec[tion] 16. refers to the definition of undue influence. The amendment was clearly introduced so as to make the scope of the law

that section under Sec[tion] 15 A is more or less consequential to sec 16.

To relieve from debtors from the strict 3 Sec 74 gives increased powers to Civil Courts to relieve debtors from the strict letter of their bond wherever the stipulation to pay damages for the breach of the contract is of a penal nature

7 KS
30/2/10. 31/3/10

[illegible]

My recollection is to the contrary effect. The matter may be referred to Legislative Department for instructions as to whether an Act will require to be drawn up

The impression left on the mind after the discussion in the Assembly is that there is no urgent necessity for this amendment.

1/4 31/3/10 9/4/10

R. S. 12]
neral and Revenue Secretariat.

Legis File No. 32 of 1909-10

Serial No.

Subd to 2nd Committee

3256. 9/4/10 6 I think that these small improvements may well be adopted here also. Please ~~let~~ put the ~~see~~ the Objects & reasons & the discussions that took place when introducing the alteration in the Supreme Leg. Council

H K Wanchoo 9/4/10

~~12/4/10~~

5 Make a draft, showing the alterations clearly & submit to the Diwan as to whether it may be introduced into the Leg. Cl.

H.M. 12/4/10

4/8/13/4

5

12/4/10

Copy of old & new sections & file

7 To the Gl. Records

Please put up the Gazette of India for 1898 containing Part V page 274 369, and ~~Gazette Part VI page 389~~, and Gazette of India for 1899 Part V page 19 2-8 and Part VI pages 10 1 and 20 26.

16/4/10 16/4/10

8 Please send separate pages in the form enclosed for being kept in place of Volumes received

16/4/10

NOTE—Contn. sheet.

BPO—55,000—27-4-09

G. R. S. 12]
General and Revenue Secretariat.

Legn File No. 32 of 1909-10

Serial No.

[N.B. Para 7-9 omitted as found unnecessary]

Subd 23/4

1. The amendments are has will be harmless alterations in our law of contract. The Speech of Hon Chalmers & the introduction of the Bill explains the object and nature of the amendments & appd for the action will be taken. 30/4/10

8 Submitted to Secy as directed by the 2nd Cl

5914 4-5-10 Table Work

30/4/10

7. It is desirable to adopt the amendments & assimilate the Indian law with that of British India. If Legislative Council will agree the subject may be brought at the next meeting of Legislative Council which will probably come off before the D&N meeting.

9

Vote

5.15 8.8.10

11 The amendments may be adopted

17.8.10

18/8/10

17/8/10

NOTE—Contn. sheet.

GPB—55,000—27-4-09

R. S. 12]
General and Revenue Secretariat.

File No. 82 of 190

Serial No. 12

Send in orders

K.S. 20/8/10 SW 19/8 13

Prep the usual drafts.

(1) Statement of objects & Reasons

and

(2) Do. to the Residency

Also 3 typed Copies of the Bill

and carefully verified

Submit

14 Draft of a Bill which had not been put up originally is now submitted for approval with draft Statement of objects and reasons & draft Do. to the Residency

20/8/10 SW (11)

16/1/11 17/1/11

15 (1) Please have the drafts typed

(2) The interpretation Clause may remain as in the Burma Indian Act.

(3) The typed copy of the Bill will have to be carefully compared again with the B. Indian Acts of 1891 & 1899

NOTE—Contn. sheet.

GPB—55,000—27-4-09

R. S. 12]
General and Revenue Secretariat.

File No. 52 of 1909

Serial No.

Please obtain a copy of Spare copies of Each of them and put up a copy of each in the file

Sd/- Illegible

14/2/11

Illegible

To the Office Section for the first time

Illegible

16 CN

Spare copies of the Bill, draft Bill and Statement of Objects & Reasons are submitted. Copies of Act XII of 1851 are available and a spare copy is put up. Spare copies of Act VI of 1855 are not available. Draft by messrs R. Coombe, C.S. is submitted for approval. (Issue).

To be attached to the proposed agenda.

No. 21/2 Illegible Points

Sd/- Illegible 25/2/11 SN

17 Sd/- Illegible

Do compare with Act V of 1855

Sd/- Illegible 21/2/11

25/2/11

1719

18 I have altered the Statement of Objects & Rea

NOTE—Contn. sheet.

GPB—55,000—27-4-09

L&J File No. 32 of 19 7

Serial No.

sons a little, to make it more accurate.

19. The drafts may be ~~sent up~~ approved.

17/3/11

Draft

The reference books kept in the P.C. have been examined out to be extended till the case is disposed of.
M. JJ
17/3/11.

10645
19. 3. 11

12

NOTE — Contn. sheet.

GPB—60,000—12-8-10

Leg I 32 of 09-10

8

Submitted to His Highness.

20 The accompanying draft bill to amend the Indian Contract Act, 1872 as in force in Mysore is intended to assimilate the law in force in Mysore to the law in British India, where the Contract Act was amended by Act No.VI of 1899. The desirability of introducing the amendments into Mysore also was urged at the Representative Assembly of 1909. The main amendments are (1) a fuller definition of the term undue influence and (2) the addition of a new section giving power to the Court to set aside contracts induced by undue influence.

Fwd 2 g-office 20-1-10.

21 The draft bill and statement of objects and reasons, and the draft letter to the Residency intimating the intention to place the bill before the Legislative Council may be approved.

T Ananda Rao
20/1/11

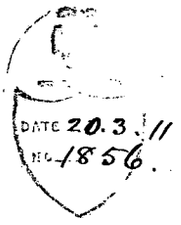
24

13

Leg 7 32 09 7 4 14

Record of Cases submitted for the Orders of His Highness the Maharaja.

Subject.



Draft Bill to amend the Indian Contract Act, 1872, as in force in Mysore.

561

Order.

22. Approved

KRW

24/3/11

Leg

Dft Kll Despatched on 6/4/11.

14

G. R. S. 12]
General and Revenue Secretariat.

Legis File No. 32 of 1909-10

Serial No.	
1	No D.O. 2086 dated 27/3/11 to the Hon'ble Col. Hugh Daly C.S.I. C.I.E. Resident in Mysore, Bangalore draft. Forwards a copy of a Bill to further amend the Indian Contract Act with a Statement of Object and Reasons and informs that it is proposed to place it before the Legis. Council in due course.
2	D.O. No 2310 dated 19/4/11 from the First Asst to the Resident in Mysore Bangalore States that there is no prima facie objection to the Bill being laid before the Legis. Cl. as proposed. Submitted (S.S.) SN(11) 21/4/11 21/4/11 23 It is too late to include this in the Agenda for the meeting of the 24th inst. 24 The Bill may therefore be published in the Gazette under rule 32 — we will thereby be advancing it by one stage S. Finlaymaiyar 25 This may be done. It is not a measure likely to be opposed in any quarter. 2nd Dewan 21/4/11 H.K. Varma 26 Secy 22/4/11

1989

NOTE — Contn. sheet.

GPB—50,000—12-8-10

112352 24.4.11 Dewan Secy

G.R. S. 12]
(General and Revenue Secretariat.

Legis. File No. 82 of 1909

Serial No.

29 Putup draft
1/6/11. Shivagounda

Legis Ch 28
Draft put up
1/6/11 29 Shivagounda

5/6/11

30 The Bill was published in the Gazette under Rule 32 of the Legislative Council Rules and introduced into the Council at the meeting held on the 11th September when it was considered & adopted by the Council with a slight alteration in Sub-clause (4) of Clause 1. The Secretary of the Govt of India has now been obtained to enable the Council to finally pass the Bill and promulgating it as law. Submitted with a view to the Residency for approval
20/10/11 SW 25/10

31 May be appd
2-8-1911. Shivagounda

2nd Dewan
32 Draft appd by 2nd Councillor
29.10.11

NOTE— Contn. sheet.

GPB—50,000—12-8-10

31.10.11 33 Draft appd by Dewan 4.11.11

G. R. S. 12]
eral and Revenue Secretariat.

Legis File No. 32 of 19 7 T 12

Serial No.

3 4 Issue

Forwd 14/1

3 No. Pol. 417 dated 9/11/11
To the F. A. Resident in Mysore
Forwards two copies of the Bill, as finally ~~passed~~ adopted by the Legis. council, for obtaining the sanction of the Govt of India for its being passed into law.

4 ~~No 1828 dated 1911~~
No 323 dated 17th Jan: 1912
From the F. A. Resident
Informs that the Governor-General in council has accorded his assent to the Bill on the usual understanding as to retention by him of the power and authority vested in him by virtue of Article 19 of the Instrument of Transfer

3.5 Submitted
(58) SN(11)
18/1/12 19-1-12

14608/30.1.12

86. Subd to 2nd Dewan

87. 2 1-9-11-12

GHB—50,000—12-8-10

13 (18

G. R. S. 12]
General and Revenue Secretariat.

Leg File No. of 1912

Serial No. 38

The Bill was finally passed by the Council at the meeting held on the 21st Febr 1912. The sanction of H.H. the Maharaja has now to be obtained for its promulgation as law. Submitted as usual with a Copy for the Dewan's signature.

7K8 (25)
26/2/12

Sd Singaravelu
26/2/12

Sd
Dewan

1530
29.2.12

C.V. Balasundara
28/2/12

Sd
29/2/12

18

NOTE— Contn. sheet.

GPB—50,000—12-8-10

Leg & 320/05-W 49

Submitted to His Highness.

9

39. The Bill to amend the Indian Contract Act of 1872, as in force in Mysore, was finally passed by the Legislative Council on the 21st February 1912. His Highness' assent may be accorded for its promulgation as law.

T. Ananda Rao
Dwn

49

19

Leg 732 of 1905-20

Record of Cases submitted for the Orders of His Highness the Maharaja

Subject.

A Bill to amend the Indian Contract Act of 1872 as in force in Mysore.

Order.

7/3/12

7/3/12

11/3/12

12/3/12

G. R. S. 12]

General and Revenue Secretariat.

Leg File No. 32 of 1909-10

Serial No. 42

Submitted with a draft by Mr Campbell for approval

MD 12/8/12 SW(III) 12/8/12 IV/3/12

43 Issue 3rd inviting

12/8/12

44. Before the order was issued an accidental omission was discovered viz the omission of the date from which the Bill is to come into force (please see Leg 1(3).) I am sorry neither the Spkr nor myself detected the omission though as always usual the Bill was again perused before the Agenda for the meeting was drafted. The omission may be rectified under rule 53 of the Leg. Council rules though Sec 5 of the Gen. Cl. Regn provides for such cases. No action under rule 53 was taken in the case of the Tank Panchayat Regn when a diffr date than that agreed to by the Leg. Council was inserted. I beg again to express my regret for the omission.

14/8/12

45. I am sorry that the matter of inserting the date was lost sight of. The matter is not of much practical importance as there is a provn in the Gen. Cl. Regn. But I think it best to insert 1 Apr. 1912 in the Gazette publication.

There is no substantial change of law & the matter will cause hardship to nobody & no long notice is required.

13/3/12

NOTE.—Contd. sheet.

GPB—20,000—20-1-12

[G. R. S. 12]

General and Revenue Secretariat. | Legis File No. 32 of 1909-10

Serial No.

47 Issued by Assistant Secretary
23/3/12

5 No J 2807 dated 25th March 1912 to the Compiler Mysore Gazette
Orders the publication of the Bill which received the assent of His Highness the Maharaja on the 7/3/12 as Regn IV of 1912

48 Submitted for information
(S) SW(11)
8/4/12
49. Seen
10/4/12

Spare copies sent - 10/4

50 Subd.
Spare copies of the Regn have been received and compared. Copies have to be sent to the Residency as usual. A draft to the Residency is herewith put up.
(S) SW(11)
16/4/12 17/4
51. Seen
25/4/12

NOTE—Contn. sheet.

GPB—20,000—20-1-12

G. R. S. 12]

General and Revenue Secretariat.	Leg File No. 32 of 1909-10
Serial No. 6	To The Resident in Mysore No. 1151 & 30th April 1910 Forwards the annual Progress of the Regulation

NOTE—Contn. sheet.

GPB—20,000—20-1-12

Legis 32 of 1909-10
Serial 1

GOVERNMENT OF MYSORE

General and Revenue Secretariat.

2086/Enz dated Bangalore, 27th ~~February~~ March 1911.

From Rao J Anandarao Esq B.A. C.R. & Asst Secretary
To Hugh Daly Esq C.S.I & C.I.E. Resident in Mysore
Sir

I beg to enclose herewith a copy of a Bill to further amend the Indian Contract Act as in force in the State together with a statement of objects and reasons.

The Bill assimilates the law on the subject of Contract in the State with that obtaining in British India. It is proposed to place it before the Legislative Council in due course.

17/3/11

Yours sincerely

(Illegible)

To
The Hon'ble Col. Hugh Daly C.S.I., C.I.E.

24

2

A Bill further to amend the Indian Contract Act as in force in Mysore.

Whereas it is expedient further to amend the Indian Contract Act as in force in Mysore; His Highness the Maharaja is pleased to enact as follows:-

Short title, extent, commencement, and application.

(1) This Regulation may be called the Indian Contract Act Amendment Regulation, 19.."

(2) It shall extend to the whole of Mysore.

(3) It shall come into force on ~~the~~ .....~~day of .....19..~~

(4) It shall apply to every contract in respect of which any suit is instituted or which is put in issue in any suit after the commencement of this Regulation.

Substitution of a new Section for section 16 of the Indian Contract Act, 1872.

2. Section 16 of the Indian Contract Act, 1872, shall be repealed and the following substituted therefor, namely:-

"Undue influence" defined.

"16 (1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage

advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of Section 111 of the Indian Evidence Act, 1872, as applied to Mysore.

Illustrations.

4

Illustrations.

(a) A having advanced money to his son, B, during his minority, upon B's coming of age, obtains by misuse of parental influence, a bond from B for a greater -- amount than the sum due in respect of the advance. A employs undue influence.

(b) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

(c) A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appears to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(d) A applies to a Banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence."

27

(5

3. In section 19 of the said Act, the words "undue influence" shall be repealed and the following new section shall be inserted after the same section, namely:—

Amendment of section 19 and addition of a new section after that section.

"19A. When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Power to set aside contract induced by undue influence.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

Illustrations.

(a) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

(b) A, a money lender, advances Rs.100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for Rs.200 with interest at 6 per cent per month. The Court may set the bond aside, ordering B to repay the Rs.100 with interest

interest as may seem just.

Amendment of sub-section (1) of section 25 of the Indian Contract Act,1872.

4. The word "documents" shall be substituted for the word "assurances" occuring in sub-section (1) of section 25 of the said Act.

Amendment of para 1 of section 43 of the Indian Contract Act, 1872.

5. The words "one or more" shall be substituted for the word "one" in para 1 of section 43 of the said Act.

Amendment of illustration (e) to section 63 of the Indian Contract Act, 1872.

6. The word "composition" shall be substituted for the word "compensation" occuring in the illustration (e) to section 63 of the said Act.

Amendment of section 74 of the Indian Contract Act,1872.

7. (1) ~~Paragraph~~ Paragraph 1 of section 74 of the said Act shall be repealed ~~and~~ and the following substituted therefor, namely:-

Compensation for breach of contract where penalty stipulated for.

"74. When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract ~~rea~~ reasonable

reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation:- A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

(2) The following illustrations shall be added after illustration (c) to the said section, namely:-

"(d) A gives B a bond for the repayment of Rs.1000 with interest at 12 per cent at the end of six months, with a stipulation that, in case of default, interest shall be payable at the rate of 75 per cent from the date of default. This is a stipulation by way of penalty and B is only entitled to recover from A such compensation as the Court considers reasonable.

(e) A, who owes money to B, a money lender, undertakes to repay him by delivering to him 10 maunds of grain on a certain date and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver 20 maunds. This is a stipula-

stipulation by way of penalty, and B is only entitled to reasonable compensation in case of breach. (8)

(f) A undertakes to repay B a loan of Rs.1000 by five equal monthly instalments with a stipulation that, in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.

(g) A borrows Rs.100 from B and gives him a bond for Rs.200 payable by five yearly instalments of Rs.40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty.

31

3/4/41

Statement of objects and reasons. (9

The law on the subject of contract in force in the State is the British Indian Act IX ~~of~~ of 1872 with the amendments made ~~to~~ ~~it~~ by the Indian Contract Act Amendment - ~~Act~~ R.J IV of 1886. The Act has since been amended in British India by Acts XII of 1891 and VI of 1899. It has now been considered desirable to introduce these amendments in to the Act as in force in the ~~St~~ State also and thus assimilate the law on the subject with that in British India. The members of the Representative Assembly have also desired that action might be taken in this direction very early. Hence the present Bill. The notes on the clauses explain the changes which are intended to be ~~x~~ introduced into the Act by the Bill.

32

Notes on clauses.

1. Clause 2:- The definition of "undue influence" contained in section 16 of the existing Act is merely an enumeration of ~~two~~ common classes of cases of undue influence ~~and not a statement of the principle on which such cases depend~~. It is now

Incorrect

The definition of Undue influence contained in S. 16 of the Contract Act is not Comprehensive enough, and

is not Comprehensive enough

(10)

now proposed to state ~~the general principle which governs~~ the law of undue influence, in the form of the general principles on which it has been determined by Courts of Equity.

2. Clause 3 :- Where a contract has been obtained through undue influence, the existing Act simply makes it voidable at the option of the party who gave such a consent. It is now proposed to give a wider discretion to the Courts in dealing with such cases. The new section 19 A accordingly gives power to them to relieve the party who acted under such influence, even though he may have received some benefit under the contract, subject to the condition that the Court may impose such terms upon the party seeking relief, as to it may seem just.

3. Clause 7 :- This amplifies the scope of the existing section 74 so as to make it applicable in terms to all stipulations by way of penalty, whether the penalty consists of a sum named in the contract or not, and is intended to relieve the debtors to some extent from payment of exorbitant interest. The members of the Representative Assembly in 1909 prayed that Civil Courts may be empowered to relieve the --

debtors

33

11

in cases where parties have contracted to pay debtors ~~from payment of such~~ usurious rates of interest~~s~~. The section as now amended is deemed sufficient to enable the Courts to give ~~to give the~~ parties all reasonable relief.

Clause 4 (~~3~~) is intended to make the provisions of the Bill applicable to ~~all~~ ~~an~~ unconscionable bargain set up by defendants in ~~any~~ suit~~s~~ after the commencement of the Regulation whether the bargain was made before or after the commencement of the - Regulation.

The changes proposed to be introduced by clauses 4, 5 and 6 are of a purely verbal character and call for no explanation.

S.M.

12

Legis 32 of 1909-10 series 2 — 92659

D. O. No. 2-2395

Mysore Residency,

D. O. No. 2310 Bangalore, dated the 19th April 191

From the R. B. Wanchoo, Esq., I.C.S., Dewan of Mysore

To the Hon'ble Dewan Sahib

"I am desired to acknowledge the receipt of your D.O. letter No.2086, dated the 17th March/ 5th April 1911, forwarding a copy of a Bill to further amend the Indian Contract Act as in force in the Mysore State, and in reply, to state that there is no prima facie objection to the Bill being laid before the Legislative Council as proposed."

Yours Sincerely
R B Wanchoo

T. Ananda Row, Esq., C.I.E.,
Dewan of Mysore.

K.M.
18.4.11.

Proposed to legislation
see: on 10/6/11

6/6/11

13

G.R.S. 26]

File No.

Serial No.

Diary No. of letter replied to

No. 359/L.C.

General and Revenue Secretariat

( )

, the 19 .

To

Mr. Micahan

Under Rule 32 of the Rules for the Conduct of business of the Mysore Legislative Council, I am accompanying a Bill further to amend the Indian Contract Act as in force in Mysore is published for general information with a Statement of objects and reasons.

Date of issue 10th June 1911

Signed S. Hariyannaiya

Yours &c.

Secy to G.

To The Superintendent, Government Press for publication in the Mysore Gazette. Also for supply of 100 Copies of the Bill with the Statement of objects and reasons.

over.

36

SUBJECT.

Proofs should be sent for approval.

Copy to Mr. Translation Section for necessary

10/6/11.

10/6/11 Secy

(14

NOTIFICATION.

No. 359—L. C., dated 10th June 1911.

Under Rule 32 of the Rules for the conduct of business of the Mysore Legislative Council, the accompanying Bill further to amend the Indian Contract Act as in force in Mysore is published for general information with a statement of objects and reasons.

By Order,

S. HIRIYANNAIYA,

Secretary, Mysore Legislative Council.

A Bill further to amend the Indian Contract Act as in force in Mysore.

Whereas it is expedient further to amend the Indian Contract Act as in force in Mysore; His Highness the Maharaja is pleased to enact as follows :—

Short title, extent, commencement, and application.

1. (1) This Regulation may be called "The Indian Contract Act Amendment Regulation, 19 ·

(2) It shall extend to the whole of Mysore.

(3) It shall come into force on

(4) It shall apply to every contract in respect of which any suit is instituted or which is put in issue in any suit after the commencement of this Regulation.

Substitution of a new section for Section 16 of the Indian Contract Act, 1872.

2. Section 16 of the Indian Contract Act, 1872, shall be repealed and the following substituted therefor, namely :—

"16 (1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

"Undue influence" defined.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(*a*) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(*b*) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of Section 111 of the Indian Evidence Act, 1872, as applied to Mysore.

Illustrations.

(*a*) A having advanced money to his son B, during his minority, upon B's coming of age obtains by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(*b*) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

37

(c) A being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(d) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence."

Amendment of Section 19 and addition of a new section after that section

3. In Section 19 of the said Act, the words "undue influence" shall be repealed and after the same section, the following new section shall be inserted, namely :—

Power to set aside contract induced by undue influence

"19A. When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

Illustrations.

(a) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

(b) A, a money lender, advances Rs. 100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for Rs. 200 with interest at 6 per cent per month. The Court may set the bond aside, ordering B to repay the Rs. 100 with such interest as may seem just."

Amendment of sub-section (1) of Section 25 of the Indian Contract Act, 1872.

4. The word "documents" shall be substituted for the word "assurances" occurring in sub-section (1) of Section 25 of the said Act.

Amendment of para 1 of Section 43 of the Indian Contract Act, 1872.

5. The words "one or more" shall be substituted for the word "one" in para 1 of Section 43 of the said Act.

Amendment of illustration (e) to Section 63 of the Indian Contract Act, 1872.

6. The word "composition" shall be substituted for the word "compensation" occurring in the illustration (e) to Section 63 of the said Act.

Amendment of Section 74 of Indian Contract Act, 1872.

7. (1) Paragraph 1 of Section 74 of the said Act shall be repealed and the following substituted therefor, namely :—

Compensation for breach of contract where penalty stipulated for.

"74. When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation.—A stipulation for increased interest from the date of default may be a stipulation by way of penalty."

(2) The following illustrations shall be added after illustration (c) to the said section, namely :—

"(d) A gives B a bond for the repayment of Rs. 1,000 with interest at 12 per cent at the end of six months, with a stipulation that, in case of default, interest shall be payable at the rate of 75 per cent from the date of default. This is a stipulation by way of penalty and B is only entitled to recover from A such compensation as the Court considers reasonable.

(e) A, who owes money to B, a money-lender, undertakes to repay him by delivering to him ten maunds of grain on a certain date and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver twenty maunds. This is a stipulation by way of penalty and B is only entitled to reasonable compensation in case of breach.

(f) A undertakes to repay B a loan of Rs. 1,000 by five equal monthly instalments with a stipulation that, in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.

(g) A borrows Rs. 100 from B and gives him a bond for Rs. 200 payable by five yearly instalments of Rs. 40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty."

STATEMENT OF OBJECTS AND REASONS.

The law on the subject of contract in force in the State is the British Indian Act, IX of 1872, with the amendments made by the Indian Contract Act Amendment Act, IV of 1886. The Act has since been amended in British India by Acts XII of 1891 and VI of 1899. It has now been considered desirable to introduce these amendments into the Act as in force in the State also, and thus assimilate the law on the subject with that in British India. The members of the Representative Assembly have also desired that action might be taken in this direction very early. Hence the present Bill. The notes on the clauses explain the changes which are intended to be introduced into the Act by the Bill.

Notes on clauses.

1. *Clause 2.*—The definition of "undue influence" contained in Section 16 of the existing Act is not comprehensive enough and is merely an enumeration of two common classes of cases of undue influence. It is now proposed to state the law of undue influence in the form of the general principles on which it has been determined by courts of equity.

2. *Clause 3.*—Where a contract has been obtained through undue influence, the existing Act simply makes it voidable at the option of the party who gave such a consent. It is now proposed to give a wider discretion to the Courts in dealing with such cases. The new Section 19 A accordingly gives power to them to relieve the party who acted under such influence even though he may have received some benefit under the contract, subject to the condition that the Court may impose such terms upon the party seeking relief, as to it may seem just.

3. *Clause 7.*—This amplifies the scope of the existing Section 74 so as to make it applicable in terms to all stipulations by way of penalty, whether the penalty consists of a sum named in the contract or not, and is intended to relieve the debtors to some extent from payment of exorbitant interest. The members of the Representative Assembly in 1909 prayed that Civil Courts may be empowered to relieve the debtors in cases where parties have contracted to pay usurious rates of interest. The section as now amended is deemed sufficient to enable the Courts to give parties all reasonable relief.

Clause 1 (4) is intended to make the provisions of the Bill applicable to pleas of unconscionable bargain set up by defendants in all suits after the commencement of the Regulation whether the bargain was made before or after the commencement of the Regulation.

The changes proposed to be introduced by clauses 4, 5 and 6 are of a purely verbal character and call for no explanation.

G.R.S. 26]

File No. 32-09
Serial No. 3

Diary No. of letter replied to

General and Revenue Secretariat

( )

, the *19*

Date of issue 9-4-4

Signed by

To

The Y.A. Resident in Mysore
Bangalore

Sir,

I am directed to forward herewith a Bill further to amend the Indian Contract Act as in force in Mysore and to state as follows:-

The law on the subject of Contract in force in the State is the British Indian Act IX of 1872 with the changes introduced into it by the Indian Contract Act Amendment Act IV of 1886.

over.

SUBJECT.

The Act has since been amended in British India by Acts XII of 1891 and I of 1899; the latter has introduced many important changes in the law such as those relating to undue influence and stipulations by way of penalty. It has now been considered desirable to introduce these changes into the Act as in force in the State, and thus assimilate the law on the subject with that in British India. The Members of the Mysore Representative Assembly have also desired that action might be taken in this direction. A Bill was accordingly framed and placed before the Legislative Council which has been approved at the meeting held on the 11th Septr 1911, when it was considered and adopted by that body with an alteration in Subclause (4) of Clause 1.

As the Subclause at present stands in the British Indian Act, it might mean (owing to the absence of the word "in this State" the word first where it occurs a second time) that

List of enclosures,

Copied by

Examined by

GPB—20,000—25-9-10

Y4
2215

(19)

G.R.S. 27]

GENERAL AND REVENUE SECRETARIAT.

(*Continuation Sheet draft form.*)

The new provisions regarding undue influence &c could be pleaded even if the suit was instituted before the Commencement of the Act, ~~no matter~~ at what stage it is whether in first appeal or second appeal. While the Allahabad High Court has been of this opinion the Madras High Court has taken a contrary view and would apply the provisions only to suits instituted after the Commencement of the Legislation. The Dunbar Committee advocate the latter view and with this object have approved of the insertion of the word "instituted" after the word 'suit' where it appears a second time in that subclause in Section

I am now to request that the sanction of the Governor General of India may be obtained for the Bill as thus amended being passed as law.

I have &c

placed this construction on the words of the subclause,

that the latter view is the one which contemplated by the Legislature

accepts

In other respects the Bill follows closely the provisions of the British Indian Act.

36

29/10/11

20/10/11

GAB—10,000—22-2-11

NOTIFICATION.

No. 359—L. C., dated 10th June 1911.

Under Rule 32 of the Rules for the conduct of business of the Mysore Legislative Council, the accompanying Bill further to amend the Indian Contract Act as in force in Mysore is published for general information with a statement of objects and reasons.

By Order,

S. HIRIYANNAIYA,

Secretary, Mysore Legislative Council.

A Bill further to amend the Indian Contract Act as in force in Mysore.

Whereas it is expedient further to amend the Indian Contract Act as in force in Mysore; His Highness the Maharaja is pleased to enact as follows :—

Short title, extent, commencement, and application.

1. (1) This Regulation may be called "The Indian Contract Act Amendment Regulation, 19 "

(2) It shall extend to the whole of Mysore

(3) It shall come into force on

(4) It shall apply to every contract in respect of which any suit is instituted or which is put in issue in any suit after the commencement of this Regulation.

Substitution of a new section for Section 16 of the Indian Contract Act, 1872.

2. Section 16 of the Indian Contract Act, 1872, shall be repealed and the following substituted therefor, namely :—

"16 (1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

"Undue influence" defined.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(*a*) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(*b*) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of Section 111 of the Indian Evidence Act, 1872, as applied to Mysore.

Illustrations.

(*a*) A having advanced money to his son B, during his minority, upon B's coming of age obtains by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(*b*) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

(*k*) A being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(*l*) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence."

Amendment of Section 19 and addition of a new section after that section.

3. In Section 19 of the said Act, the words "undue influence" shall be repealed and after the same section, the following new section shall be inserted, namely :—

Power to set aside contract induced by undue influence

"19A. When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

Illustrations.

(*a*) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

(*b*) A, a money lender, advances Rs. 100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for Rs. 200 with interest at 6 per cent per month. The Court may set the bond aside, ordering B to repay the Rs. 100 with such interest as may seem just."

Amendment of sub-section (1) of Section 25 of the Indian Contract Act, 1872.

4. The word "documents" shall be substituted for the word "assurances" occurring in sub-section (1) of Section 25 of the said Act.

Amendment of para 1 of Section 43 of the Indian Contract Act, 1872.

5. The words "one or more" shall be substituted for the word "one" in para 1 of Section 43 of the said Act.

Amendment of illustration (*c*) to Section 63 of the Indian Contract Act, 1872.

6. The word "composition" shall be substituted for the word "compensation" occurring in the illustration (*c*) to Section 63 of the said Act.

Amendment of Section 74 of Indian Contract Act, 1872.

7. (1) Paragraph 1 of Section 74 of the said Act shall be repealed and the following substituted therefor, namely :—

Compensation for breach of contract where penalty stipulated for

"74. When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation.- A stipulation for increased interest from the date of default may be a stipulation by way of penalty."

(2) The following illustrations shall be added after illustration (*c*) to the said section, namely :—

"(*d*) A gives B a bond for the repayment of Rs. 1,000 with interest at 12 per cent at the end of six months, with a stipulation that, in case of default, interest shall be payable at the rate of 75 per cent from the date of default. This is a stipulation by way of penalty and B is only entitled to recover from A such compensation as the Court considers reasonable.

(*e*) A, who owes money to B, a money-lender, undertakes to repay him by delivering to him ten maunds of grain on a certain date and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver twenty maunds. This is a stipulation by way of penalty and B is only entitled to reasonable compensation in case of breach.

(*f*) A undertakes to repay B a loan of Rs. 1,000 by five equal monthly instalments with a stipulation that, in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.

(*g*) A borrows Rs. 100 from B and gives him a bond for Rs. 200 payable by five yearly instalments of Rs. 40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty."

STATEMENT OF OBJECTS AND REASONS.

The law on the subject of contract in force in the State is the British Indian Act, IX of 1872, with the amendments made by the Indian Contract Act Amendment Act, IV of 1886. The Act has since been amended in British India by Acts XII of 1891 and VI of 1899. It has now been considered desirable to introduce these amendments into the Act as in force in the State also, and thus assimilate the law on the subject with that in British India. The members of the Representative Assembly have also desired that action might be taken in this direction very early. Hence the present Bill. The notes on the clauses explain the changes which are intended to be introduced into the Act by the Bill.

Notes on clauses.

1. *Clause 2.*—The definition of "undue influence" contained in Section 16 of the existing Act is not comprehensive enough and is merely an enumeration of two common classes of cases of undue influence. It is now proposed to state the law of undue influence in the form of the general principles on which it has been determined by courts of equity.

2. *Clause 3.*—Where a contract has been obtained through undue influence, the existing Act simply makes it voidable at the option of the party who gave such a consent. It is now proposed to give a wider discretion to the Courts in dealing with such cases. The new Section 19 A accordingly gives power to them to relieve the party who acted under such influence even though he may have received some benefit under the contract, subject to the condition that the Court may impose such terms upon the party seeking relief, as to it may seem just.

3. *Clause 7.*—This amplifies the scope of the existing Section 74 so as to make it applicable in terms to all stipulations by way of penalty, whether the penalty consists of a sum named in the contract or not, and is intended to relieve the debtors to some extent from payment of exorbitant interest. The members of the Representative Assembly in 1909 prayed that Civil Courts may be empowered to relieve the debtors in cases where parties have contracted to pay usurious rates of interest. The section as now amended is deemed sufficient to enable the Courts to give parties all reasonable relief.

Clause 1 (4) is intended to make the provisions of the Bill applicable to pleas of unconscionable bargain set up by defendants in all suits after the commencement of the Regulation whether the bargain was made before or after the commencement of the Regulation.

The changes proposed to be introduced by clauses 4, 5 and 6 are of a purely verbal character and call for no explanation.

Pol No. 1124
Dr 17-1-12.

No. 323 DIARY No. 1828

17-1-12 dated Ms

17th January 1912

Legy

17.1

3911-1912
SECTION: Legis
FILE NO. 32-09

FROM

P. B. WARBURTON, Esq., I. C. S.,
FIRST ASSISTANT TO THE RESIDENT IN MYSORE.

To

The Dewan of Mysore.

Dated Bangalore, 17th January 1912.

SIR,

I am directed to acknowledge the receipt of Mr. Balasundaram Iyer's letter No. 417 Pol., dated the 9th November 1911, forwarding for the orders of the Government of India a draft Bill which the Darbar propose to enact to amend the Indian Contract Act, 1872(IX of 1872), as in force in the Mysore State.

Legy 32-09

2. In reply, I am to state that the Governor General in Council has been pleased to accord his consent to the draft Bill on the understanding that he retains over it the power and authority which vests in him by virtue of Article 19 of the Instrument of Transfer.

I have the honour to be,

Sir,

Your most obedient servant,

M B Warburton

First Assistant Resident.

41

R. O. 2.—R. P. B.—8-1911.—3,000.

G.R.S. 28.]

Legis File No. 32-09
Serial No. 5

Diary No. of letter replied to

Proceedings of the Government of His Highness the Maharaja of Mysore.

GENERAL AND REVENUE SECRETARIAT.
(Legis)

~~READ~~

, *the* 19

Date of issue 25-3-12

Signed by Mr B. Narasimmachar

ORDER ~~THEREON~~.—No. J 2807/Legis 32-09-5

That the accompanying Bill further to amend the Indian Contract Act as in force in Mysore which received the assent of His Highness the Maharaja

over

SUBJECT.

42

GPB—10,000—19-4-10

on the 7th March 1912 be published
for general information as Regulation
~~No. 2 of 1880~~ No. IV of 1912.

To SW(CH) Dr Asst Secy to Govt.
SH

The Compiler, Mysore Gazette, of
publication has the Gazette in
English & Canarese and for
supplying 300 spare
copies in English and 10 spare
copies in Canarese to this office
and a bill number to this
Circle, for Book Depot, for
sale. Canarese translation
will follow. Proof should be
sent for Correction.

MD

REGULATION No. IV OF 1912.

(RECEIVED THE ASSENT OF HIS HIGHNESS THE MAHARAJA ON THE 7TH DAY OF MARCH 1912.)

A Regulation further to amend the Indian Contract Act as in force in Mysore.

Whereas it is expedient further to amend the Indian Contract Act as in force in Mysore; His Highness the Maharaja is pleased to enact as follows:—

Short title, extent, commencement, and application.

1. (1) This Regulation may be called "The Indian Contract Act Amendment Regulation, 1912."

(2) It shall extend to the whole of Mysore.

(3) It shall come into force on the 1st day of April 1912.

(4) It shall apply to every contract in respect of which any suit is instituted or which is put in issue in any suit instituted after the commencement of this Regulation.

Substitution of a new section for Section 16 of the Indian Contract Act, 1872.

2. Section 16 of the Indian Contract Act, 1872, shall be repealed and the following substituted therefor, namely:—

"16 (1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

"Undue influence" defined.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(*a*) Where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(*b*) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of Section 111 of the Indian Evidence Act, 1872, as applied to Mysore

Illustrations.

(*a*) A having advanced money to his son B, during his minority, upon B's coming of age obtains by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(*b*) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

(*c*) A being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(*d*) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence."

Amendment of Section 19 and addition of a new section after that section.

3. In Section 19 of the said Act, the words "undue influence" shall be repealed and after the same section, the following new section shall be inserted, namely :—

Power to set aside contract induced by undue influence.

"19 A. When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

Illustrations.

(*a*) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

(*b*) A, a money-lender, advances Rs. 100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for Rs. 200 with interest at 6 per cent per month. The Court may set the bond aside, ordering B to repay the Rs. 100 with such interest as may seem just."

Amendment of sub-section (1) of Section 25 of the Indian Contract Act, 1872.

4. The word "documents" shall be substituted for the word "assurances" occurring in sub-section (1) of Section 25 of the said Act.

Amendment of para 1 of Section 43 of the Indian Contract Act, 1872.

5. The words "one or more" shall be substituted for the word "one" in para 1 of Section 43 of the said Act.

Amendment of illustration (*e*) to Section 63 of the Indian Contract Act, 1872.

6. The word "composition" shall be substituted for the word "compensation" occurring in the illustration (*e*) to Section 63 of the said Act.

Amendment of Section 74 of Indian Contract Act, 1872.

7. (1) Paragraph 1 of Section 74 of the said Act shall be repealed and the following substituted therefor, namely :—

Compensation for breach of contract where penalty stipulated for.

"74. When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation. A stipulation for increased interest from the date of default may be a stipulation by way of penalty."

(2) The following illustrations shall be added after illustration (*c*) to the said section, namely :—

"(*d*) A gives B a bond for the repayment of Rs. 1,000 with interest at 12 per cent at the end of six months, with a stipulation that, in case of default, interest shall be payable at the rate of 75 per cent from the date of default. This is a stipulation by way of penalty and B is only entitled to recover from A such compensation as the Court considers reasonable.

(*e*) A, who owes money to B, a money-lender, undertakes to repay him by delivering to him ten maunds of grain on a certain date and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver twenty maunds. This is a stipulation by way of penalty and B is only entitled to reasonable compensation in case of breach.

(*f*) A undertakes to repay B a loan of Rs. 1,000 by five equal monthly instalments with a stipulation that, in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.

(*g*) A borrows Rs. 100 from B and gives him a bond for Rs. 200 payable by five yearly instalments of Rs. 40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty."

T. ANANDA ROW,
Dewan.

G.R.S. 26] 294

Legis File No. 32-14
Serial No.

Diary No. of letter replied to

General and Revenue Secretariat

( )

, the 19 .

Date of issue 30-4-12

Signed by

for C S Balasundaram

To

The F. A. Resident
in Mysore Bangalore

Sir

I am directed to forward herewith a copy of Regn IV of 1912, a Regulation further to amend the Indian Contract Act as in force in Mysore, with 9 spare copies, and to request that a copy may, as usual, be forwarded to His Highness the Nizam's Government.

I have &c.

for Secretary to Gov

SUBJECT.

Letter Roc. No. 910 dated the 8th April 1912 from the Secretary to H.E.H. the Nizam's Government

Draft
16/4/12